

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7336

Petition of Central Vermont Public Service)
Corporation for approval of an alternative-)
regulation plan)

Order entered: 10/23/2008

ORDER RE: MOTION FOR RECONSIDERATION AND CLARIFICATION

I. INTRODUCTION

On September 30, 2008, the Vermont Public Service Board ("Board") issued a final Order in this proceeding that adopted an alternative regulation plan (the "Modified Plan") for Central Vermont Public Service Corporation ("CVPS" or the "Company"), to take effect on November 1, 2008. On October 10, 2008, CVPS filed a Motion for Reconsideration and Clarification of the Board's September 30, 2008, Order in this proceeding. CVPS asks that we clarify four issues related to implementation of the Modified Plan:

- The statute that will apply to the Board's investigation of CVPS's 2009 base-rate filing and the beginning of the period to be investigated;
- Whether, after the Board completes its investigation of the 2009 base-rate filing, CVPS will be able to recover revenues that it would have recovered had the rates taken effect on January 1, 2009;
- The effective date of the earnings sharing mechanism ("ESAM") and power cost adjustment mechanism ("PCAM") under the Modified Plan; and
- The compliance schedule.

On October 15, 2008, the Department of Public Service ("Department") filed a response to CVPS's motion. As explained below, the Department supports several of CVPS's proposed clarifications and opposes others.

In this Order, we clarify our September 30 Order as follows:

- The investigation of the base-rate filing is governed by 30 V.S.A. § 218d, which sets out the parameters for alternative regulation plans;

- The November 1, 2008, base-rate filing is for a proposed effective date of January 1, 2009. The rate period to be investigated is calendar year 2009;
- If the Board suspends the base-rate filing, any rate adjustment will be implemented prospectively on a bills-rendered basis, not retroactively;
- The PCAM and ESAM measurement periods will commence on January 1, 2009. The first PCAM adjustment shall be filed on May 1, 2009, for effect on July 1, 2009; and
- The compliance schedule set out below shall apply.

II. DISCUSSION

A. Governing Law

CVPS asserts that the possible suspension and investigation of the November 1, 2008, base-rate filing is governed by 30 V.S.A. § 218d(d), which provides:

Alternative regulation may include such changes or additions to, waivers of, or alternatives to, traditional rate-making procedures as the board finds will promote the public good and will support the required findings in subsection (a) of this section.

The Department agrees with CVPS that the applicable statute is Section 218d. However, the Department maintains that the Board has already exercised its discretion under § 218d by (a) adopting the Modified Plan, which provides for a base-rate filing that is "subject to Board suspension and review;"¹ and (b) specifying that the Board was prepared to suspend and investigate the initial base-rate filing "as we would any other traditional rate case filing."²

Our September 30 Order approved the Modified Plan with an effective date of November 1, 2008. As of that date (and through the end of 2011), regulation of CVPS is under the terms of the Modified Plan and as permitted by Section 218d. This applies to the suspension and investigation of base-rate and other filings, as well as other aspects of the Modified Plan. As CVPS notes, Section 218d(d) allows the Board to modify traditional ratemaking practices if we find such modifications promote the general good and are consistent with the requirements for alternative regulation. This means that the normal procedures that apply to tariff filings under

1. Citing exh. CVPS-WJD-2 at 3.

2. Citing Order of 9/30/08 at 38.

Sections 225, 226, and 227 may be modified, although to the extent that those provisions are not specifically modified by the Modified Plan itself, we would expect to follow those procedures.

B. Rate Period Subject to Investigation

CVPS requests that we clarify that the beginning of the period to be investigated is rate year 2009, commencing January 1, 2009. The Department agrees that the Board's intent seemed to be that the investigation would examine the rates beginning January 1, 2009 (citing the September 30 Order at 38).

We agree with the parties and clarify our Order. Under the Modified Plan, the November 1, 2008, base-rate filing would produce rates effective January 1, 2009, unless those rates are suspended. Thus, the period to be investigated is the rate year commencing January 1, 2009 (*i.e.*, calendar year 2009), the same period that the rates set out in the filing would otherwise be effective.

C. Retroactive Recovery of Revenues

CVPS asks that the Board permit it to recover any lost revenues that may result from a delay in the effective date of new rates beyond January 1, 2009, in the event the Board suspends and investigates CVPS's base-rate filing. CVPS asserts that the investigation could become protracted if the Department elects to contest aspects of the base-rate filing, such as employee headcount. CVPS indicates that it hopes to avoid a confrontation on this issue, reminding the Board and the Department of the Board's admonition to the Company in 1994 to move from confrontation to cooperation,³ but appears to anticipate a dispute, particularly in light of the fact that the Business Process Review report did not resolve staffing issues previously raised by the Department. CVPS contends that it expects to have "legitimate incremental operating costs that cannot be recovered because its request for a rate change on January 1 will be suspended until completion of the investigation proceeding;"⁴ CVPS's inability to recover these costs, it

3. Citing Dockets 5701/5724, Order of 10/31/94 at pp. 5–7.

4. CVPS Motion at 5.

maintains, could have an adverse effect upon the Company's credit metrics and affect its progress towards achieving investment-grade ratings.

The Department opposes retroactive application of any rate increase, stating that it has no basis in either the Order or in the Modified Plan. The Department cites to the long-standing prohibition against retroactive ratemaking, with the only departures from that practice those that are specifically authorized by the Modified Plan (such as the ESAM and PCAM). The Department further asserts that the provision for suspension and investigation of the base-rate filing contemplates prospective application of any rate change after the completion of the investigation.⁵

Section 218d(d) provides the Board with substantial flexibility to adjust traditional ratemaking provisions. However, any such adjustments must promote the general good and be directed towards achieving the statutory criteria that any alternative regulation plan must meet. This statutory mandate means that we should not use Section 218d(d) to alter traditional ratemaking except where such alterations are designed to establish appropriate incentives for the regulated company and provide benefits to the public and the company. We employed this analysis in deciding as part of the Modified Plan which adjustments to traditional ratemaking methodology were appropriate. Thus, in the context of base-rate filings, we approved a Modified Plan that coupled a cap on non-power costs with a more streamlined process for review and implementation of any rate changes incorporated in the filing. As the Department points out, the Modified Plan specifically contemplates that, if the Board suspends the base-rate filing, any rate changes would occur on a prospective, not retroactive, basis. This, coupled with the rate cap, encourages CVPS to submit base-rate filings that reflect reasonable changes to operating costs and are thus less likely to be suspended and investigated.

CVPS has presented no basis for us to alter this balance and adopt a different approach for the November 1, 2008, base-rate filing. CVPS has made a generalized statement that it is possible that the delay in implementing a base-rate adjustment could have an adverse effect upon the Company's ability to earn its allowed return. But CVPS has not suggested why retroactive application promotes the general good or, more importantly, is consistent with a "reasonably

5. Citing exh. CVPS-WJD-2 at 3.

balanced system of risks and rewards that encourages the Company to operate as efficiently as possible using sound management practices."⁶ Thus, we conclude that the Modified Plan structure, which provides that suspended base-rate filings will be implemented on a prospective basis, should apply.

We note, however, that this determination does not necessarily mean that CVPS will be unable to recover cost increases in a timely manner. In our September 30 Order, we did not state that the base-rate filing *would* be investigated. Rather, we stated that we "will be prepared to suspend the filing and investigate it in full within seven months. . . ."⁷ It remains possible that, if CVPS submits a filing that adequately demonstrates the reasonableness of any rate changes and the Department does not request suspension, we would allow the base-rate filing to take effect on January 1, 2009.⁸ Moreover, it is possible that CVPS could implement a rate adjustment before June 1 if it reaches a settlement with other parties or the issues are sufficiently narrow that it is possible to resolve them more quickly. CVPS thus has significant incentive to carefully examine all of the costs and adjustments that it includes in the base-rate filing to assure that they are reasonable. We also have the option of allowing the rate adjustment to take effect and then initiating an investigation of existing rates under procedures equivalent to Section 227(b) (which would provide that any rate decrease would apply retroactively). Parties should bear in mind, however, that the purpose of this filing is to establish not only the overall rate level for 2009, but to determine the baseline for purposes of adjusting the non-power-cost cap and the PCAM in the future. Thus, any settlement we approve must address these matters.

We also want to stress that, although CVPS seems to dismiss the Department's concerns about employee-staffing levels as part of a focus on confrontation, we consider this to be a legitimate issue for the Department to raise. It was our expectation that the Business Process Review would examine these issues. We reflected this understanding in our Order in Docket

6. 30 V.S.A. § 218d(a)(8).

7. Order of 9/30/08 at 38.

8. To assist us in making our determination, we specifically require that the Department's filing on November 17, 2008, include not simply a recommendation on whether or not to suspend, but, if the Department recommends suspension, a brief delineation of the major issues underlying that decision and their materiality to CVPS's rate levels. This requirement is a modification to the normal process for DPS recommendations. However, in light of the special circumstances relating to this initial base-rate filing, we consider it reasonable.

7321, where we specifically found (based upon the stipulated agreement of CVPS and the Department), that the review would encompass "organizational structure and staffing levels."⁹ We acknowledge that in our September 30 Order, we declined to incorporate a proposal by the Department to encourage more streamlined staffing levels by increasing the productivity adjustment to the annual change in the non-power cost cap. However, we reached this conclusion not because we found that employee staffing levels were reasonable, but because the Department had not presented enough specific evidence concerning staffing levels to burst the presumption in favor of the reasonableness of the Company's existing costs.¹⁰ This determination was also informed by our expectation concerning the scope of the Business Process Review.¹¹ It was because of this expectation, and the fact that the review was not complete at the time of our Order, that we specifically permitted the Department and/or CVPS to seek modifications to the non-power cost cap adjustment mechanism after completion of that study. Nonetheless, although we find the staffing levels to be an acceptable area for inquiry by the Department, both parties should keep the issue in perspective relative to the other elements of CVPS's costs. Thus, we encourage CVPS and the Department to develop a mutually acceptable methodology for examining this issue effectively and with appropriate dispatch.

D. Effective Date of Earnings Sharing and Power Cost Adjustment Mechanisms

CVPS takes the position that all elements of the Modified Plan should commence at the same date. Thus, CVPS maintains that, if the Board accepts its position concerning the applicable period for the base-rate adjustment, the ESAM and PCAM should commence on

9. Docket 7321, Order of 1/31/08 at 6.

10. *See* Docket 5132, Order of 5/15/87 at 79–89. In the instant proceeding, the Department presented only general concerns about staffing levels, without any supporting data. We would expect that, if the Department chooses to challenge the reasonableness of staffing levels for CVPS in the context of the base-rate filing, during any hearing it will present concrete evidence concerning what it considers the appropriate staffing levels and the basis for its conclusion.

11. CVPS filed the Business Process Review in Docket 7321 on October 14, 2008. As the parties represented at the Status Conference on October 8, it appears that the Department and CVPS have been unable to agree on a mechanism for review of staffing levels. Thus, the Review does not appear to fully address the Department's concerns.

January 1, 2009. This would mean that the first date for filing under the PCAM would be May 1, 2009 (covering power costs incurred between January 1 and March 31, 2009).

The Department agrees with CVPS that all portions of the Modified Plan should be implemented at the same time, although it interprets this date to be November 1, 2008 (the effective date of the Modified Plan).¹² The Department contends that, if the Board does not authorize retroactive application of the 2009 base-rate filing, it would be problematic to calculate the PCAM for the first two quarters of 2009. The Department maintains that the solution is to adopt as the baseline the settlement agreed to in Docket 7321. As an alternative, the Department recommends that the Board simply defer the effective date of the entire Modified Plan until June 1, 2009, after the base rates are determined. The Department also suggests the option of commencing the PCAM filings only after a determination of the 2009 base rates.

As to the starting point for the PCAM and the ESAM, we conclude that the measurement period should commence January 1, 2009. This would mean that the first PCAM adjustment would be filed May 1, 2009, for effect on July 1, 2009, with the initial filing based upon a November 1, 2008, base-rate filing that may be subject to investigation. However, this could occur with the first quarter PCAM adjustment each year. Moreover, we would expect that, if the baseline for any PCAM adjustment were modified as a result of the Board's review of the base-rate filing, CVPS will adjust the PCAM to reflect any change in the power costs ordered by the Board.

We also do not accept the proposition that the ongoing review of the first base-rate filing somehow means that the Modified Plan is being implemented incrementally. The November 1, 2008, base-rate filing and our potential investigation of it are consistent with the Modified Plan itself (with the exception of the one additional month that our Order included). The heightened significance of the initial investigation is necessary to establish the baseline power and non-power costs necessary for making rate adjustments under the Modified Plan; it is not to suggest that the effective date of the Modified Plan is deferred.

12. The Department states that an alternative would be to have the Modified Plan take effect January 1, 2009.

E. Compliance Schedule

CVPS has requested that we adopt a schedule for the compliance filings and further proceedings in this docket. The Department largely accepts CVPS's proposal, but recommends several adjustments. We have considered those comments and adopt the following schedule.

October 31, 2008	<ul style="list-style-type: none"> • CVPS files revised and restated Alternative Regulation Plan • CVPS files Base Rate Filing with a test year of calendar year 2007 and a rate year commencing January 1, 2009
November 1, 2008	<ul style="list-style-type: none"> • Effective date of the Modified Plan • Termination of 2008 Earnings Cap measurement period under Docket 7321 Order (for 10.71% authorized ROE)
November 7, 2008	CVPS describes the Modified Plan in a separate mailing to ratepayers
November 17, 2008	Department files Audit Report on Base Rate filing, including recommendation on whether to suspend and/or investigate rate adjustments. If the Department recommends suspension, it shall delineate the major issues and their materiality to CVPS's rate levels
November 21, 2008	Board will determine whether to suspend and investigate CVPS's Base Rate filing ¹³
December 1, 2008	<ul style="list-style-type: none"> • After working with the Department, CVPS will submit sample Plan filing formats with the Board for approval as to form • Department and other parties file comments on CVPS's October 31st restated Modified Plan
January 1, 2009	Commencement of the 2009 Rate Year with respect to the ESAM and PCAM
January 30, 2009	CVPS report on supplier-caused outages regarding CVPS's wholesale customers
March 30, 2009	CVPS to propose timetable to fully implement AMI or Advanced Metering Infrastructure (CVPS "SmartPower")
May 1, 2009	CVPS notifies the Board and Department of ESAM and PCAM adjustment (if any), followed by notice to customers
June 30, 2009	CVPS files proposed criteria for reviewing the effectiveness of the Modified Plan with the Board and the Department

13. If the Board decides to suspend the filing, it will schedule a prehearing conference as soon as feasible.

July 1, 2009	Power cost adjustment effective on a bills-rendered basis as calculated under the PCAM with respect to the difference between allowed and actual power costs during the First Quarter of 2009 (<i>i.e.</i> , the three months commencing January 1, 2009)
November 1, 2009	CVPS must propose a fixed-power-price option for ratepayer choice
December 31, 2011	Plan termination date

The above schedule incorporates the initial filings under the Modified Plan; it does not include the on-going filings, including subsequent quarterly filings and rate adjustments under the PCAM, the annual Base Rate filings for 2010 and 2011, or the ESAM for later years. It also does not incorporate specific dates for CVPS's actions to implement the Settlement with the Conservation Law Foundation.

SO ORDERED.

Dated at Montpelier, Vermont, this 23rd day of October, 2008.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: October 23, 2008

ATTEST: s/Judith C. Whitney
Deputy Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.